

Annual Re-Certification Waiver Policy

IRS Revenue Procedure 2004-38, replaces IRS Procedure 94-64 becoming effective on July 6, 2004, establishing the procedure on how to seek a waiver of the Annual Income Re-certification requirement allowed by Section 42 of the Code (Appendix A).

The law provides that “on application of the taxpayer, the (Treasury) Secretary may waive any annual re-certification of Tenant income for purposes of Section 42(g), if the entire building is occupied by low-income Tenants.” Although the Code uses the word “building” with reference to waivers, requests are made for complete Developments. Waivers will not be granted for individual buildings. **In addition, although the Code uses the word “re-certification waiver”, the requirement for the Owner to annually receive 3rd party income Verifications for Tenants is the only requirement that actually is waived.**

A. General Waiver Information

When an Owner receives a waiver from the IRS, the Owner then will not be required to:

1. Keep records showing income Verifications of any occupant who has previously had his or her Annual Income, verified, documented, and certified;
2. Maintain income Verification documentation; or
3. Certify to the Indiana Housing and Community Development Authority that such documentation has been received.

The waiver only waives the requirement to obtain Verifications of Income and Assets of existing residents. All new applicants/residents must be fully qualified with complete verifications and certifications. This includes existing residents who transfer to a different apartment outside the same building.

Additionally, a Tenant Certification must still be completed showing the anticipated Income the Tenant expects to receive in the next twelve months and the Student status of the Tenant. Finally, rents must still be tracked on an ongoing basis to ensure that restricted rent levels are maintained and Utility Allowance requirements are followed. **IHCDA is still required by the IRS to perform compliance monitoring reviews of the development at least once every three years.**

At a minimum, the following items must continue to be present in the Tenant’s file when the property obtains the waiver:

1. Initial Application, Tenant Eligibility Questionnaire, Tenant Certification, and Verifications of Income, Assets and other eligibility requirements from the move-in date of the Tenant;
2. Annual Tenant Certifications and Tenant Eligibility Questionnaires with the anticipated Income the Tenant expects to receive in the next twelve months and the Student status of the Household (after the initial Tenant Certification, Income Verifications are no longer required);
3. Initial and subsequent leases.

Note: The Annual Owner Certification of Compliance, monitoring fees, and supporting documents are still a requirement for a Development with a waiver.

B. Term of Waiver

The waiver will take effect on the date the Service approves the waiver.

The Owner must continue standard re-certification practices until the waiver letter is actually received from the IRS, and a copy is furnished to IHCD.

A waiver remains in effect unless revoked by the IRS. The IRS can revoke a waiver for the following reasons:

- If a building ceases to be 100% RHTC;
- If IHCD reports compliance problems through the submission of a Form 8823 to the IRS;
- There is a pattern of households comprised entirely of full-time students;
- Owner no longer submits Annual Owner Certification of Compliance to IHCD;
- Change in ownership of the property (will be revoked automatically for change in ownership);
- Building ceases to be decent, safe and sanitary for tenants;
- The IRS determines that owner has violated Section 42 in a manner that is sufficiently serious enough to warrant revocation.

If revocation occurs, the Owner of the property will have to re-certify all residents, beginning on the effective date of the revocation, as if the waiver had never been granted.

C. Waiver Conditions

To obtain a waiver, the Development must meet the following criteria:

1. No non-compliance issues are outstanding;
2. Each current resident is a qualified low-income resident;
3. All adult Tenants in the Household have signed a sworn statement to document income in accordance with procedures in Revenue Procedure 2004-38 (See Appendix A);
4. The Development is one hundred percent (100%) RHTC eligible;
5. The Development has received an IRS form 8609 and has been through at least one reporting cycle with IHCD, including tenant file review and Annual Owner Certification of Compliance review;
6. The Development must have no outstanding items of noncompliance with Section 42 Regulations; and
7. The Development and its owner(s) and management agent must be in good standing with IHCD.

D. Requesting a Waiver

If an Owner decides to request a waiver, a file review of 100% of the Development's units must be performed.

To request the re-certification waiver the development owner must submit the "Application for the Re-certification Waiver", along with the application fee of \$150.00. The fee must be

received before an application will be reviewed. The application fee is non-refundable, but will be credited to the developments total fee if waiver review is completed.

After a review of the property has occurred IHCDCA will provide the Owner a statement that each residential unit in the building is in compliance with Section 42. Once the development owner has received the letter from IHCDCA, the owner will need to complete and sign Part I of IRS Form 8877 and submit to IHCDCA. IHCDCA will review the form, complete the State's portion and return to the development owner. The development owner must then complete Part II of Form 8877 and submit the original to the IRS and a copy to IHCDCA to be kept with the Development's records. No other party may submit a waiver request.

IRS Form 8877 must be sent to:

The Internal Revenue Service
PO Box 245
Philadelphia, PA 19255

When the IRS approves the waiver, the owner is responsible for sending a copy of the approval notice to IHCDCA. The development will continue to be treated as a non-re-certification waiver property until the IRS approval letter is received by IHCDCA.

E. Denial and Appeals Process

Denials

If IHCDCA finds an issue of non-compliance with the waiver application or any tenant file during the file review process the owner is responsible for providing a timely response to IHCDCA's correction requests with the following submission guidelines:

- First request – The owner has seven business days to provide the requested documentation. If the owner fails to respond or the documentation fails to correct the issue(s) of non-compliance, a second request will be issued.
- Second request – The owner has five business days to provide requested documentation. If owner fails to respond or the documentation fails to correct the issue(s) a final request will be issued.
- Final request – The owner has three business days to provide the requested documentation.
- If there is not a reply received from the owner, the development will be denied the waiver for failure to respond.

The owner may request an extension in writing for the submission of the requested documentation. No extension request from the management company will be accepted. If the owner received a request from IHCDCA for information and requires an extension to submit documentation, a written request must be submitted to the Multi-Family Manager at:

30 South Meridian Street, Suite 1000
Indianapolis, IN 46204

The request must be received prior to the last day the submission is due. Failure to follow guidelines may result in the denial of the Re-certification waiver application.

IHCDA reserves the right to deny an application even if non-compliance issues are resolved, or for just cause. If IHCDA finds patterns of Management/Owner practices that are inconsistent with IRS and/or IHCDA standards, the Waiver may be denied. Violations may include, but are not limited to:

- Backdated forms (tenant Income Certifications, Sworn Income and Asset Statements, etc.);
- Correction fluid used on forms;
- Signing required forms prior to dates allowable by IHCDA;
- Lack of response on the part of the management/owner to issues identified during the tenant file review process of the development.

Appeals

If the Re-certification Waiver is denied, an appeal must be submitted to IHCDA within ten (10) business days from the date of denial. An appeal must be in writing on the Company letterhead and signed by the Owner. The written appeal must describe in detail why the appeal should be granted and provide documentation to that effect. Appeals need to be submitted to the Multi-Family Manager and the above listed address. IHCDA will provide the owner with a written notification of the appeal decision. All decisions to deny an appeal are final. Any Development denied a Re-certification waiver may submit an application the following calendar and complete the process again.

F. Waiver Fees

The fees for the Re-certification waiver are on a per unit basis. The fee will be \$30.00 per unit with a minimum of \$500.00 for initial review. For each unit that requires a second review (for corrections) an additional charge of \$10.00 per unit reviewed will be imposed.

All initial review fees must be paid in full by no later than ten (10) business days prior to the site review. IHCDA reserves the right to cancel reviews if applicable fees are not received on a timely basis. Checks should be made payable to Indiana Housing and Community Development Authority and sent to 30 South Meridian Street, Suite 1000 Indianapolis, IN 46204.